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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/630,377

07/30/2003

Gianfranco D'Amato

03910/0211496-US0

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02/25/2010

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EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/25/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/630,377	<b>Applicant(s)</b> D'AMATO, GIANFRANCO	
	<b>Examiner</b> MICHELE JACOBSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-6, 9-13, 15-31, 33-39 and 41-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6, 9-13, 15-31, 33-39 and 41-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Examiner Notes***

1. Any objections and/or rejections made in the previous action, and not repeated below, are hereby withdrawn.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2-6, 9-13, 15-26, 30, 31, 33-39 and 41-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of copending Application No. 10/630,378. Although the conflicting

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claims are not identical, they are not patentably distinct from each other because the claims of application '378 teach all that is claimed in the rejected claims of the pending application. Regarding claims 45-47, 4-6 and 8, claim 29 of application '378 teaches a container having all of the limitations of claim 45-47 and 4-6 of the current application in combination. Note at least one layer is taught by at least two layers because the limitation "at least one layer" includes any number of layers. Claims 2 and 9-10 are taught by claims 13 and 31 of application '378. Claim 3 is taught by claim 12 of '378. Claim 8 is taught by claim 5 of '378. Claim 11 is taught by claim 16 of '378. Regarding claim 12, the limitation that the two or more layers are coextruded is a method limitation and therefore receives little patentable weight in an article claim, since the final product is a laminated structure which is taught by '378 in claim 16. Also it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to form the multilayered container of '378 by lamination and/or coextrusion since both methods are notoriously well-known methods in the art for forming multilayered containers and that the particular method chosen is selected based on the intended end result and intended processing of the article. Regarding claims 13-26, these limitations are taught in claims 2-4, 6, 8-11, 15, and 17-19 of '378 respectively. Claims 30-31 are taught by claim 14 of '378. The limitations of claims 32-43 are taught by claims 21-30 and 32-33 of '378 respectively. Note the claims of the two applications are not conflicting because the independent claim of '378 requires that the container be collapsible and a specific combination of limitations in which the claims of '377 do not require even though the claims of '377 teach all of those limitations individually.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 17, 37 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 17 has been amended to recite "wherein the at least two layers include an inner layer that is liquid tight and a further layer that is gastight". It is unclear from this recitation if the liquid tight and gastight layers comprise the "two layers" or if the "further" gastight layer is in addition to "the at least two layers". The examiner notes that claim 46, from which claim 17 depends, recites that the "at least two layers" are transparent and fluid tight, therefore the recitation of a "liquid tight" inner layer is redundant since this feature has already been recited. For the purpose of examination it will be assumed by the examiner that "the at least two layers" comprise a gastight layer and a liquid tight layer. The examiner suggests that reciting "wherein the at least two layers include a layer that is gastight" may more accurately reflect the invention applicant is intending to claim. Appropriate clarification is required.

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7. Claim 37 recites the limitation "wherein the container is a container to hold food and the print is visible only after food has been at least partially removed from the container". There is insufficient antecedent basis for this limitation in the claim. Claims 20, 8 and 46, from which claim 37 depends, do not positively recite food being present in the container recited. The addition of the limitation that "the container is a container to hold food" also does not positively recite that food is disposed within the container and is only limiting insofar as it is a recitation of an intended use of the container. Therefore, it would be impossible for food to be removed from the container since it is not positively recited to be present. For the purpose of examination claim 37 will be interpreted to include the limitation of a container *containing* food "wherein the print is visible only after food has been at least partially removed from the container".

Appropriate correction is required.

8. Claim 39 recites the limitation "wherein the opening edge is partially formed". It is unclear how the opening edge of the container recited in claim 45, from which claim 39 depends, can be "partially formed" since it is recited in claim 45 that "the container is *surrounded* by a bent opening edge". It is unclear how something that is "surrounded" can also be "partially formed". Since it is unclear what applicant intends this limitation to mean, claim 39 will be interpreted to include the limitation wherein the opening edge surrounds the withdrawal opening. Appropriate clarification is required.

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**Claim Rejections - 35 USC § 102**

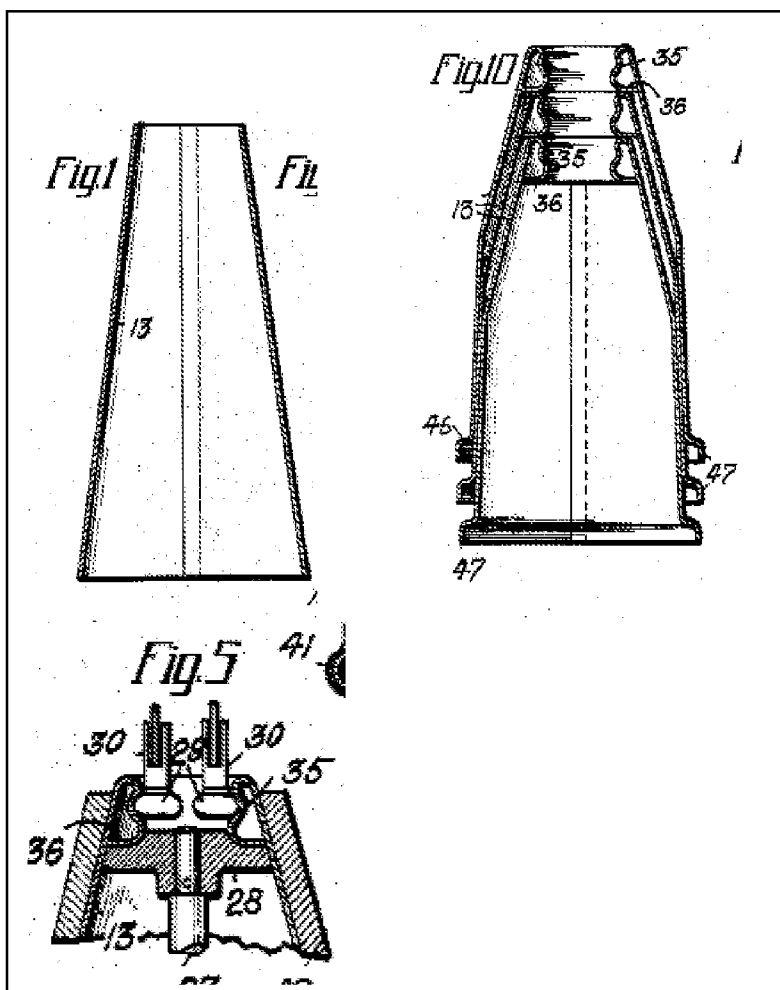
9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 3-6, 11-13, 15-22, 24, 26-30, 32-34, 36, 39 and 41-47 rejected under 35 U.S.C. 102(b) as being anticipated by McGirr et al. U.S. Patent No. 2,235,963 (hereafter referred to as McGirr).

11. McGirr teaches a container that is fabricated from a sheet of cellulose material that is transparent, light in weight, tough in texture and unbreakable for holding either liquids or dry materials. (Col. 1, lines 4-12) The container also insulates the contents from all parts of the container itself and therefore may be utilized in handling articles of food.



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(Col. 1, lines 13-16) The container consists of a sheet of celluloid, cellophane or similar cellulose materials cut to the proper shape, which are then formed into a frustrum as shown in Fig. 1, the frustrum being held in form by its overlapping edges which form a seam as seen in Fig. 3. (Col. 2, lines 19-27) The various seams of the container may have a solvent or adhesive applied to them to further aid their making a tight seal so that they would hold either liquids or powder. (Col. 4, lines 36-41) As can be seen in Figs. 5 and 10 the opening of the container comprises bent over material from the sides of the container which surrounds the opening. (Fig. 5 and 10) The container is recited to have printing. (Col. 3, lines 45-46)

12. The bottom of the container consists of a circular disc of cardboard or other material to which is laminated cellophane or some other moisture proof material. (Col. 3, lines 54-58) The container is recited to comprise an additional layer which may be sprayed cellulose nitrate, certain gums and plasticizers and a high lacquer solvent which covers the entire inside of the container to make it completely moisture proof while at the same time providing an insulating medium that prevents the contents of the container from coming in contact with any part of the container itself. (Col. 4, lines 21-30)

13. Regarding claims 45-47: The container recited by McGirr anticipates the transparent container comprising a wall comprising at least one layer or multiple layers including an opening surrounded by a bent ridge recited in claims 45-47. While McGirr is silent regarding the dimensional stability and fluid tightness of the container between 50° C to 120° C and -50°C to 120° C the materials recited would inherently display



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these properties. Therefore, McGirr anticipates all of the limitations set forth in independent claims 45-47.

14. Regarding claim 3: McGirr clearly recites a sprayed lacquer.

15. Regarding claim 4: Celluloid, cellophane and similar cellulose materials are well known to be flexible. It is noted applicant has not specified the degree of the flexibility and therefore since all materials would be expected to display some measure of flexibility, any material would read on this limitation.

16. Regarding claim 5: The limitation in claim 5 that the connection of the blank is prepared by heat and/or pressure is a product by process limitation that does not materially affect the article produced. Therefore, an article with a seam such as disclosed by McGirr reads on the container recited in claim 5.

17. Regarding claim 6: McGirr recites a longitudinal seam.

18. Regarding claims 11 and 12: The product by process limitations recited in claims 11 and 12 would not be expected to produce a materially different product from that disclosed by McGirr. Therefore, the container comprising two layers disclosed by McGirr anticipates the container claimed in claims 11 and 12.

19. Regarding claim 13: The container disclosed by McGirr is produced from a flat sheet (or blank) of material.

20. Regarding claim 15: The sprayed on material of the second layer of McGirr is not intended to be peeled away and is therefore interpreted to read on the limitation that the two or more layers are joined in a permanent junction.

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21. Regarding claim 16: While McGirr is silent regarding the elasticity and ductility of the materials of the layers, the sprayed on material layer is interpreted to meet the limitations of being elastic yet permanently ductile since it contains polymeric materials (gums) and the cellulose layer is dimensionally stable.

22. Regarding claim 17: The material recited by McGirr is disclosed to be liquid tight and would inherently be gastight.

23. Regarding claim 18: McGirr discloses the use of adhesive to form the seam of the inventive container which is interpreted to read on the outer and inner layers being connection layers at least in the overlap region recited in claim 18.

24. Regarding claim 19: Since the materials disclosed by McGirr are fluid tight, the edges would be fluid tight as well.

25. Regarding claims 20, 22, 24, 30 and 34: McGirr clearly recites printing the cellulose film prior to spraying the inside of the container with the second layer. McGirr therefore anticipates the container claimed in claims 20, 24 and 30. It is noted the limitation of lamination in claim 24 is a product by process limitation that would not produce a materially different article from that disclosed by McGirr. The container disclosed by McGirr also anticipates the container claimed in claim 22 since the surface of the cellophane outside is interpreted to be an outer side of the inner sprayed layer since applicant does not require that the printing be disposed in contact with the inner layer. The printing disclosed by McGirr is also interpreted to read on the limitation of a "three-dimensional effect" recited in claim 34 since it is a physical object having three dimensions.

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26. Regarding claim 21: The printing recited by McGirr would be intended to be a label and would therefore not be intended to be rubbed off. Therefore, the printing recited by McGirr is interpreted to be resistant to rubbing. It is noted that applicant has not specified how much resistance must be present for printing to be interpreted to be resistant to rubbing.

27. Regarding claims 26-28: The lower sections of the wall (or blank) disclosed by McGirr are connected to one another and then an insert is disposed therein. As such, the container of McGirr is interpreted to read on the limitation that "the closed end is *formed* by connecting lower end sections of the blank to one another" as claimed in claim 26. McGirr recites connecting the lower end sections of the wall to an insert piece and therefore anticipates the container claimed in claim 27. The insert recited by McGirr is recited to be coated with cellophane and is therefore interpreted to be "formed from a transparent material" as recited in claim 28.

28. Regarding claim 29: The container disclosed by McGirr is recited to be transparent and since it is visible must be colored.

29. Regarding claim 33: The container disclosed by McGirr is circular.

30. Regarding claim 36: Claim 36 recites the limitation "wherein the print forms a control window on the wall". Applicant's specification describes the term "control window" as "that the print covers the complete container wall except for a control window that the interior of the container can only be seen through this control window. In this connection, it is also possible for several of such control windows to be arranged in the longitudinal direction of the container and or/in the circumferential direction of the

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container. Thereby, various areas of the interior of the container can be seen". (Para. [0058] applicant's specification) This description does not specify the shape of these "control windows" or the amount of the surface of the container that must be covered in order for the unprinted area to be interpreted to comprise a "control window". The examiner interprets the limitation of a "control window" to mean that the container is printed such that some regions of the surface obscure visibility of the contents of the container and some regions are unprinted and thereby comprise "control windows". As such, a container having any printing with any regions that are not printed reads on this limitation. As such, McGirr anticipates the limitations of claim 36.

31. Regarding claim 39: The container opening edge is surrounds the withdrawal opening.

32. Regarding claim 41: The container would inherently be able to be stacked and unstacked since one of ordinary skill would be capable of balancing one on another.

33. Regarding claim 42: Both of the layers of the container recited by McGirr would be expected to provide some measure of heat insulation and therefore are interpreted to be formed as a heat insulating layer.

34. Regarding claim 43: McGirr begins with a sheet of material which is interpreted to be a blank.

35. Regarding claim 44: The material recited by McGirr would be expected to remain transparently stable from -50°C to 120°C.

***Claim Rejections - 35 USC § 103***

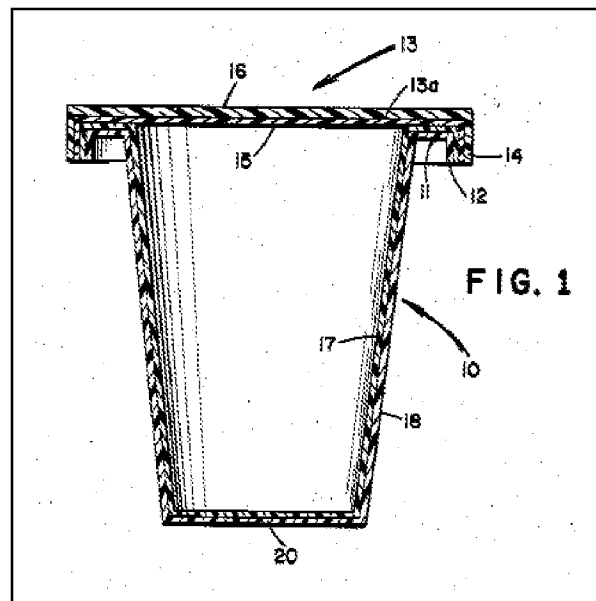
36. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

37. Claims 2, 9, 10, 23, 25, 31 and 38 rejected under 35 U.S.C. 103(a) as being unpatentable over McGirr and Andrulionis U.S. Patent No. 3,934,749 (hereafter referred to as Andrulionis).

38. McGirr teaches what has been recited above but is silent regarding producing the container walls from polypropylene, oriented polypropylene, polyethylene, PET, PVC, polyamide, oriented polyamide or polystyrene and bending the opening edge outward.

39. Andrulionis teaches a covered plastic container used for food products having a fluid tight sealing layer across the container opening. (Col. 1, lines 4-9) Such a container is disposed with a rim that is bent outward from the container for receiving the lid. (Fig. 1) Laminate materials useful for the container include (with the outer layer recorded last)



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polyethylene-polystyrene, HIPS-polyethylene, ABS-polypropylene, polystyrene-PVC and polyethylene-PVC. (Col. 2, line 60-Col. 3, line 4) The sealing of the lid to the container is recited to be accomplished by methods including ultrasonic welding. (Col. 3, lines 52-54)

40. Regarding claims 2, 9 and 10: Both Andrulionis and McGirr are directed towards transparent containers for food. One of ordinary skill would have been motivated to substitute the polymer laminate materials recited by Andrulionis for the coated cellophane material recited by McGirr in order to provide a container wall that was fluid tight that did not require the additional spray seal step recited by McGirr. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have produced the containers recited by McGirr utilizing the polymer laminate materials recited by Andrulionis. This obvious substitution of an element known in the art for the same purpose would have produced the invention claimed in claims 2, 9 and 10.

41. Regarding claim 23: Andrulionis specifically recites ultrasonic welding for the sealing of the lid to the container and therefore the materials recited would be ultrasonic absorbent. Additionally, this limitation is a product by process limitation which would not be expected to produce a materially different product from conventional heat welding. The examiner takes official notice that the materials recited by Andrulionis are universally known in the packaging arts for producing heat seals and one of ordinary skill in producing the packaging recited by McGirr using the laminates recited by

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Andrulionis would have known to utilize a heat seal to form the longitudinal seam recited by McGirr.

42. Regarding claim 25: Utilizing the laminate materials recited in Andrulionis in the invention of McGirr would have resulted in a polymer laminate that was then coated with lacquer as recited by McGirr. Such a laminate would have comprised a layer that was itself a laminate as claimed in claim 25.

43. Regarding claim 31: The recitation of coextrusion in claim 31 is a product by process limitation which would not be expected to produce a materially different article from one produce from layers of material that had been laminated. Nonetheless, the examiner takes official notice that it is universally known in the polymer packaging arts to produce packaging laminates by coextrusion. Andrulionis recites polyethylene to be a useful material for liquid tight containers and McGirr recites printing. Therefore a polyethylene container comprising printing produced from the combination of the teachings of McGirr and Andrulionis would have been the same as the invention claimed in claim 31.

44. Regarding claim 38: The utility of an outwardly bent flange around the rim of a container to receive a sealable lid is clearly demonstrating in Fig. 1 of Andrulionis. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized an outwardly bent flange to receive a lid in the invention of the McGirr in order to provide a heat seal to the container produced. This obvious modification would have produced the invention as claimed in claim 38.

45. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGirr as applied to claim 20 in view of McLaughlin U.S. Patent No. 6,210,766 (hereafter referred to as McLaughlin)

46. McGirr teaches all that is claimed in claim 46 as shown above but fails to teach that the container comprises printing that is or has a hologram. However, McLaughlin teaches that a container is provided with decoration and information for the user, especially in the form of a hologram or three dimensional effects. One of ordinary skill in the art would have recognized that McGirr and McLaughlin are analogous insofar as the references are concerned with forming a container from a two-dimensional blank. It would have been obvious to one having ordinary skill in the art to provide a container with printing in the form of a hologram or three dimensional effects in order to provide that container with decoration and/or information for the user of the container.

47. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing such as a hologram or three dimensional effects to one of the layers of the container of Yamada et al in order to provide the container with decoration and/or information for the user of the container, as taught by McLaughlin.

48. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGirr as applied to claim 20 in view of Clagett U.S. Patent No. 2,689,424 (hereafter referred to as Clagett).



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49. McGirr teaches all that is claimed in claim 20 as shown above, but fail to teach that printing is applied to the container so that it is only visible after the food has been at least partially taken out of the container. However, Clagett teaches a drinking container in which two images are created in different colors so that one image is present when the beverage is present and the other image is present when the beverage is not present in order to provide a unique aesthetic appeal to the beverage container (col.1, lines 1-29). One of the prints of Clagett is only visible after the food has been taken out of the container (col.2, l.32-49). One of ordinary skill in the art would have recognized that McGirr and Clagett are analogous insofar as both references are concerned with forming containers having a sidewall in which the contents of the container can be seen through. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container in order to provide a unique aesthetic appeal to the container, as taught by Clagett.

50. Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add printing that is only visible after food is removed from the container of McGirr in order to provide a unique aesthetic appeal to the container, as taught by Clagett.

***Response to Arguments***

51. Applicant's arguments filed 12/7/09 have been fully considered but they are not persuasive.

52. Applicant has asserted on page 11 of the remarks that because McGirr does not recite the same product by process limitations claimed by applicant, that the article of McGirr cannot anticipate the instantly claimed invention. Although McGirr does not disclose the same process used by applicant, it is noted that “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process”, *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, “although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product”, *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

53. Therefore, absent evidence of criticality regarding the presently claimed process limitations or arguments or evidence demonstrating a material difference between the claimed container and the container disclosed by McGirr and given that the container of McGirr meets the requirements of the claimed container, McGirr meets the requirements of presently claimed invention.

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54. Applicant has asserted on page 12 of the remarks that “neither McGirr nor Andrulionis disclose or suggest a blank formed from at least two layers as recited in claims 45-47”. However, claims 45-47 claim a *container*, not a blank. Therefore, any product-by-process limitations relating to the “blank” recited in the claims must be shown to result in a materially different product from that disclosed in the prior art as discussed above. Therefore, applicant’s arguments are not found persuasive.

55. Applicant has asserted on page 12 of the remarks that “it is evident that the inner layer (of Andrulionis) is not transparent since Andrulionis describes that the plastic for the inner layer of the lid is chosen based on “whether or not it is desirable to visually inspect the contents of the container”. It is unclear to the examiner how the disclosure that the lid may or may not be transparent indicates that it “is not transparent” as asserted by applicant. Andrulionis discloses alternative embodiments based on “whether or not it is desirable to visually inspect the contents of the container” which does not constitute disclosing that the lid never transparent. Applicant’s arguments are therefore not found persuasive.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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